SOAH DOCKET NO. 582-09-5328
TCEQ DOCKET NO. 2009-0929-UCR

APPLICATION OF DEER CREEK RANCH WATER CO., LLC TO CHANGE ITS RATES AND TARIFF UNDER CERTIFICATE OF CONVENIENCE AND NECESSITY NO. 11241 IN HAYS AND TRAVIS COUNTIES	**§**	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

DEER CREEK RANCH WATER COMPANY'S
EXCEPTIONS TO THE PROPOSAL FOR DECISION

TO THE HONORABLE COMMISSIONERS:

Deer Creek Ranch Water Co., LLC, (the "Water Co.") respectfully submits these Exceptions to Administrative Law Judge's ("ALJ's") Proposal for Decision ("PFD") in the above-referenced proceeding and will show the following in support of those Exceptions:[1]

I.
SUMMARY OF EXCEPTIONS

1. The ALJ, as the trier of fact, applied the wrong standard of review when weighing the evidence presented at the hearing;

2. The ALJ's approach to Affiliated Interests cannot be correct, as it would require every Investor-Owned Utility to meet extraordinary requirements not required by the Commission in the past;

3. The ALJ failed to include all of the Water Co.'s reasonable and necessary operating expenses, as required by State law and the Commission's rules;

4. The ALJ's proposed rate fails to allow the Water Co. to receive a return on its invested capital;

5. The ALJ's proposed annual depreciation does not include the depreciation for all of the Water Co.'s used and useful assets;

[1] The Water Co. herein incorporates its previously filed Closing Arguments and Response to Closing Arguments.

6. The ALJ's proposed other expenses does not include all of the reasonable and necessary expenses of the Water Co, and does not allow recovery of any rate case expense;

7. The ALJ's setting of a rate that does not protect the financial integrity of the Water Co. is against public policy and State legal requirements;

8. The ALJ's proposed rate design is not based upon the Water Co.'s revenue requirement, as shown by the preponderance of the credible evidence; and

9. The ALJ's proposed assessment of transcript costs ignores the financial plight of the Water Co.

For the reasons set out above, the Water Co. respectfully requests that the Commission find that the Water Co.'s rates, as proposed, are just and reasonable.

II.
BACKGROUND

The Water Co. is a small, Investor-Owned-Utility ("IOU") serving approximately 402 customers in the rural Hill Country outside Austin. The Water Co., as an IOU, is exactly that – a utility owned by private investors, principally Sam Hammett through his corporation, Deer Creek Ranch, Inc. In the last couple of years, Mr. Hammett has invested much of his own personal savings in the Water Co. to upgrade its facilities to comply with specific orders issues by the Texas Commission on Environmental Quality. In fact, to upgrade these facilities, Mr. Hammett spent considerably more than $1 million. As a result of this significant investment and changes to the system, the Water Co. customers now enjoy rare LCRA-treated surface water in an area largely served by poor quality groundwater wells. The Legislature specifically authorizes rate increases to permit a utility a reasonable opportunity to earn a reasonable return on its invested capital and to preserve the integrity of the utility. The Water Co. merely seeks an overall rate

that will allow such reasonable return and leave it intact. Unfortunately, the Proposal for Decision ("PFD") would do the opposite and actually accelerate the "financial death spiral" the Administrative Law Judge ("ALJ") foretells.[2]

In fact, the ALJ recommends that for his investment of over $1 million in the Water Co., that Mr. Hammett receive no return on his investment.[3] None. Moreover, the ALJ recommends that the Water Co. have negative income, that the water company operate at an annual loss.[4] He makes this claim despite the Water Co. filing a 562-page, 4-inch thick binder that includes an invoice, receipt, and cancelled check for every dollar included in the Water Co.'s Test Year. Every single, solitary dollar. He makes this claim despite his knowledge of the Water Co.'s $1.6 million loan obtained to fund the construction of the improvements to the Water Co.'s infrastructure – infrastructure that the Commission itself required the Water Co. to construct with the very design plans that the E.D. dictated, reviewed, and approved. The ALJ ignores the evidence in this case and, in the face of overwhelming evidence, he argues conjecture, surmise, or suspicion should be the basis of his finding of facts.

The administrative law judge (ALJ) did not properly apply or interpret applicable law, agency rules, written policies or prior administrative decisions

[2] PFD at 65.
[3] The ALJ recommends a return on investment of $62,294, which is over $30,000 less than the Water Co.'s interest-only payment on its loan of $95,809. In effect, the ALJ recommends that the Water Co. lose over $30,000 per year and that Mr. Hammett receive $0 on his investment over $1 million. PFD at 62, 65.
[4] PFD at 67.

III.
BURDEN OF PROOF

As the ALJ correctly stated in his PFD, a utility has the burden of proof to show that a proposed change of the utility's water rate is just and reasonable.[5] However, the standard of proof that the utility must meet is neither the reasonable doubt standard of criminal proceedings nor the intermediate standard of clear and convincing evidence, which is that measure or degree of proof that would produce "in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established."[6] Rather, the standard of proof in a rate case is the preponderance of evidence standard. By definition, "preponderance of the evidence" is not a great burden to meet, but simply the greater amount of evidence.[7] In other words, the evidence shows that something "is more likely than not."[8]

In a contested case, evidence that is irrelevant, immaterial, or unduly repetitious must be excluded from consideration.[9] No evidence means not only a complete absence of evidence, but also evidence that cannot be given legal effect, because the evidence is too weak.[10] According to the Texas Supreme Court, "too weak" evidence is any "evidence offered to prove a vital fact [that] is so weak as to **do no more than create a mere surmise or suspicion of its existence**."[11] Further, the Court declared such evidence "is, in legal effect, no evidence, and will not support a verdict or judgment." [12]

---

[5] TEX. WATER CODE § 13.184(c).
[6] *State of Texas v. Addington*, 588 S.W.2d 569, 570 (Tex. 1979).

[7] *Superior Lloyds of America v. Foxworth*, 178 S.W.2d 724 (Tex.Civ.App. -- Amarillo 1944) writ refused.
[8] *Southwestern Bell Tel. Co. v. Garza*, 164 S.W.3d 607, 621 (Tex. 2004).
[9] TEX. GOV'T CODE § 2001.082
[10] *Southwestern Bell Tel. Co.*, 164 S.W.3d at 621.
[11] *Id.* (emphasis added).
[12] *Id.*

In this matter, the ALJ did not properly apply or interpret applicable law, agency rules, written policies or prior administrative decisions when he applied varying standards of proof or when he created new and higher standards for affiliated interests.[13] The Commissioners should overturn the ALJ's findings of fact that serve as the basis for his decision, as his findings are not supported by the great weight of the evidence. The ALJ's findings are based upon irrelevant or immaterial evidence that may not considered in making a decision, or the ALJ's findings are based upon mere surmise made by an opposing party or suspicion of the existence of some evidence, which have no legal effect and cannot support any findings and, therefore, any Order of the Commission based on those findings.

IV.
EXCEPTIONS TO ALJ'S AFFILIATED INTERESTS

The ALJ did not properly apply or interpret applicable law, agency rules, written policies or prior administrative decisions when he concluded that affiliated transactions, primarily that relationship between the Water Co. and Deer Creek Ranch, Inc. (the "Land Company"), should be subject to some mythical "higher standard of review." The ALJ neither provides a citation to the law requiring such higher standard nor explains why a higher standard of review is warranted, because such a standard does not exist. The ALJ confuses apples and oranges when it comes to standard of review. The ALJ also bases his findings upon mere surmise made by an opposing party or suspicion of the existence of some evidence, which have no legal effect and cannot support any findings.

[13] *See e.g.,* PFD, Section VI, pp. 5-6 ("The ALJ scrutinizes each of those transactions very closely and applies the higher standard of review for affiliated transactions").

The applicable statute and corresponding Commissioners' rule regarding Affiliated Interests does not require a utility to meet a different standard than the preponderance of evidence standard. Rather, the Legislature said that any payment to an affiliated interest must be a reasonable and necessary expense,[14] which is the same requirement that all other costs used to develop a rate must be measured against.

> A finding of reasonableness and necessity must include specific statements setting forth the cost to the affiliate of each item or class of items in question and a finding that the price to the utility is no higher than prices charged by the supplying affiliate to its other affiliates or divisions for the same item or items, or to unaffiliated persons or corporations.[15]

In other words, to justify any inter-entity dealings, an Affiliated Interest must show if it has any dealing between the entities, then those dealings pass the "sniff test." The costs for an item must be similar to those costs for the same or similar item if provided between unaffiliated entities or between the supplying affiliate and a third affiliate.

In this case, it is undisputed that the Land Company is a parent company of the Water Co., as the Land Company is the sole member of the Water Co. It is also undisputed that the Commissioners and the E.D. approved the transfer of the Certificate of Convenience and Necessity ("CCN") from the Land Company to the Water Co. in 2005.[16] In fact, the ownership relationship between the Land Company and the Water Co. is similar to the ownership relationship between Aqua America and Aqua Texas.[17] It is also undisputed that the Land

---

[14] TEX. WATER CODE §13.185 (e).
[15] *Id.*

[16] Applicant ("App.') Ex. 27.
[17] Application of Aqua Utilities, Inc. and Aqua Development Company d/b/a Aqua Texas, Inc. to Change Water and Sewer Rates; TCEQ Docket Nos. 2004-1671-UCR and 2004-1120-UCR; SOAR Docket Nos. 582-05-2770 and 582-05-2771 (hereinafter the "*Aqua Case*").

Company, and its stockholder Mr. Hammett, are the sole investors in the Water Co.[18] Thus, the Land Company and Mr. Hammett are affiliated with the Water Co. However, there are only two (2) transactions between these Affiliated Interests that are subject to Section 13.195 of the Texa Water Code.

The first is the Water Co.'s lease of Land Company assets, which the ALJ summarily disallowed in his PFD,[19] even though the Commission previously approved this lease.[20] As part of the transfer of the CCN from the Land Company to the Water Co. via lease, the E.D. and the Commission approved the lease between these Affiliated Interests as part of an Application to Sell, Transfer, or Merge.[21] The Commission approved this transfer of the CCN via lease, thus, the Commission previously decided that this transaction between Affiliated Interests complied with the legislation and the Commissions' associated rules. However, at hearing, the E.D. claimed that while he had recommended approval of the lease to the Commission as part of the backup material for the 2005 CCN transfer and while the Commission did approve the transfer via lease based upon the E.D.'s recommendation, the E.D. did not actually approve the lease. The E.D.'s claim is not evidence. At best, the claim is unsubstantiated legal argument, if not pure nonsense, considering its practical result – the Commission approved a transfer of the CCN via lease so the Water Co. could provide continuous and adequate water service to the previous customers of the Land Co., yet without the lease, the Water Co. would have had no facilities with which to provide its new customers with continuous and adequate water service. In essence, what the E.D.'s staff is arguing to the Commissioners is essentially that the E.D. and the

[18] App. Ex. 4, Application Tab at 32; App. Ex. 11 at 8; App. Ex. 19 at 8; Appl. Ex. 33, Promissory Note, at 3; App. Ex. 33, Commercial Pledge and Security Agreement, at 1, 7.
[19] PFD at 36.
[20] App. Ex. 27.
[21] *See* App. Ex. 24; App. Ex. 25; App. Ex. 26; App. Ex. 27.

Commission did not do their job when the Commission previously approved the lease between these Affiliated Interests. Although the Commission and the E.D. approved the lease of the facilities between these two Affiliated Interests, the Commission and the E.D. did not approve the lease.[22] Even though he did, he really didn't? The E.D.'s claim is illogical or disingenuous. Regardless, the argument is without any merit, and it is not evidence that may be used to decide any issue at hand. In his PFD, the ALJ bases his finding to disregard the Water Co.'s lease on the E.D.'s discredited argument, which has no legal effect, is not evidence, and the Commission cannot use to support any finds of fact or conclusions of law.

The second transaction between Affiliated Interests is Water Co.'s payment of Mr. Hammett's salary for his work. Again, the ALJ bases his findings regarding Mr. Hammett's salary upon his belief of a new, higher standard of review. However, the payment of a salary to an owner cannot be the type of transaction that the Legislature envisioned when it adopted this statute. Nearly every IOU, and easily every IOU not a national corporation, employ their owners as operators, managers, or both on behalf of the utility. The Legislature did not intend for every Mom-and-Pop IOU to go through some higher standard of review to justify paying the owners any salary for their time.

As the Water Co. does not employ any other manager or chief operating officer, then there is not another transaction in which to make a comparison. Therefore, the relevant consideration regarding Mr. Hammett's salary is whether the salary is reasonable and necessary.

The ALJ did not properly apply or interpret applicable law, agency rules, written policies or prior administrative decisions regarding affiliated interests. The Commissioners should overturn the ALJ's Findings of Fact Nos. 29, 134, and 135, as his findings of fact are based upon

[22] *See* 30 Tex. Admin. Code §291.112. This rule requires that the Commission prescribed the conditions included within any lease as part of a transfer of a CCN.

misinterpretation of applicable law, agency rules, written policies, or prior administrative decisions regarding affiliated interests.

V.
EXCEPTIONS AND ARGUMENTS – OPERATING EXPENSES

A. Post Test Year Inflation Adjustments

The ALJ did not properly apply or interpret applicable law, agency rules, written policies or prior administrative decisions when he categorically disallowed allowed post-test year adjustment to operational expenses due to inflation.[23] At the same time, the ALJ did allow other, post-test year adjustments based upon a percentage increase. For example, the ALJ did allow a 5% adjustment for the Water Co.'s salary.[24] The ALJ's decision to disallow certain percentage cost adjustments but not others is arbitrary and capricious.

To justify his interpretation, the ALJ mistakenly claims that the Commission sets rates based upon the historic test year.[25] However, this statement is simply untrue. The Commission sets utility rates on a projection of future costs, typically referred to as an **adjusted test year**, which is developed from the historic test year costs adjusted for "known and measurable changes." In fact, the E.D.'s application form uses the term "Revenue Requirement for next yr" to establish the revenue requirement for rate development,[26] not solely the expenses incurred during the historic test year to establish the rates. Moreover, in a number of recent cases, the Commission has approved rates based upon budgeted or projected costs. For example, in the *Chisholm Trail Case*, the Commission affirmed as proper Chisholm Trail's use of budgeted costs

[23] PFD at 8.
[24] PFD at 12.
[25] PFD at 8.
[26] App. Ex. 4, Application Tab, at 14.

to establish its water rates.[27] In Finding of Fact No. 17, the Commission said that it was reasonable and appropriate for Chisholm Trail to "adjust its test year expenses according to its budgeted expenses."[28] In 2008, the Commission again approved the use of projected budgets to set the water rates in the *Aqua Case.*[29] The ALJ's claim that the Commission sets rates on the historic test year is utterly false.

According to the ALJ, the increase in customers or the amount of inflation can never be known or measurable. To adopt the ALJ's approach, the Commission could never include any adjustments to historic data, as increases in customers or changes in prices could never be known or measurable in advance without the aid of a very reliable soothsayer, except for those very few instances in which there is an adjustment included within a prior contract.[30] His misapplication and misinterpretation of applicable law, agency rules, written policies, or prior administrative decisions would result in utilities never adjusting upward their expected costs for the Adjusted Test Year. This approach is counter to what the Commission customarily allows, which includes an adjustment for inflation due to an increase in the number of customers as shown in the E.D.'s application form.[31]

In his PFD, the ALJ summarily dismissed the only learned treatises on ratemaking discussed during this hearing, which illustrates the ALJ's total lack of understanding in this area. The American Water Works Association ("AWWA") M1 Manual, as well as M35 Manual, both use the term projection of costs when referring to a utility making known and measurable

[27] *See* Order Denying the Ratepayer's Appeal of the Retail Water Rate Increase of Chisholm Trail Special Utility District; SOAR Docket No. 582-05-0003; TCEQ Docket No. 2004-0979-UCR (hereinafter "*Chisholm Trail Case*"), at 3.
[28] *Id.*
[29] *See* Order Approving the Application of Aqua Utilities, Inc. and Aqua Development Company d/b/a Aqua Texas, Inc. to Change Water and Sewer Rates; TCEQ Docket Nos. 2004-1671-UCR and 2004-1120-UCR; SOAR Docket Nos. 582-05-2770 and 582-05-2771 (hereinafter *Aqua Order*), at 12.
[30] PFD at 8.
[31] App. Ex.4, Application Tab, at 17.

changes to historic cost data. Again, all ratemaking, including all ratemaking approved by the Commission, is based upon the projection of costs from historic data. In these same learned treatises, the AWWA states that adjusted historic data is "intended to forecast, as nearly as practicable, the future levels of revenue and revenue requirements so that the utility may make adequate, but not excessive, adjustments in revenues in a timely manner."[32] According to the AWWA, these adjustments to historic data may include adjustments due to "changes in the number of customers served, changes in water demand, inflation, and changes in operating conditions or maintenance needs that may be expected. …"[33]

Mr. Rauschuber, the Water Co.'s Professional Engineer, was the only witness who testified regarding the anticipated increase in the number of Water Co. customers during the Adjusted Test Year.[34] Based upon his analysis of the Utility's historic records of the number of customers served, the Water Co. would realize an increase in customers of at least 8.7% during the Adjusted Test Year, which is the same annual increase in customers as the Water Co. incurred historically.[35] Mr. Rauschuber also testified that the average inflation rate in Texas over the past 10 years has been 3% per annum.[36] No other evidence is in the record on this matter. These known and measurable changes (i.e., the 8.7% plus the 3% equals 11.7%) exceed the conservative 10% included by Mr. Rauschuber in his rate design.

Under his approach, the ALJ would not allow an increase in costs even for the ever-rising cost of stamps, an increase as sure as death and taxes. Indeed, one cannot base adjustments for "known and measurable changes" without making projections into the future. That's why the

[32] AGX Ex. 2, BWF-3, at 5.
[33] App. Ex. 23, at 19-20.
[34] App. Ex. 20, at 15; App. Ex. 4, Application Tab, at 15.
[35] *Id.*
[36] Tr. at 238:2.

best professional judgment of the only professional engineer to testify on the matter is the best adjustment that could ever be made to historic data in a rate case. But the ALJ disregarded this record evidence.

The ALJ did not properly apply or interpret applicable law, agency rules, written policies or prior administrative decisions when he categorically disallowed post-test year adjustment to operational expenses for inflation. The Commissioners should overturn the ALJ's Findings of Fact Nos. 12, 14, and 15 that serve as the basis for his decision, as his findings are not supported by the great weight of the evidence and he misinterpreted applicable law, agency rules, written policies, and prior administrative decisions.

B. Salaries and Wages

The ALJ did not properly apply or interpret applicable law, agency rules, written policies or prior administrative decisions when he disallowed salaries for one and a half employees (of a total of two people that the Water Co. employs). The Commission should overturn the ALJ's findings of fact that serve as the basis of his decision, as his findings are not supported by the great weight of the evidence. The ALJ based his analysis on testimony the E.D. later admitted was mistaken.

The historic test year for the Water Co. was for the period July 1, 2007 through June 30, 2008.[37] The only credible evidence in this matter shows that the Water Co. paid $49,200 in salary during the historic test year, which included testimony by the only Certified Public Account to testify in this matter,[38] copies of the Water Co.'s Form 941 Quarterly Federal Tax

[37] App. Ex. 4, Spreadsheet Tab, at 2; App. Ex. 20 at 9; E.D. Ex. 1 at 4.
[38] App. Ex. 19 at 8; Tr. at 532-35.

Returns filed with the U.S. Internal Revenue Service,[39] and the Water Co.'s Profit & Loss Statement for the Fiscal Year,[40] which coincides with the historic test year.

Instead of basing his findings on the credible evidence in the record, the ALJ based his finding on the E.D.'s confusion over the historic test year versus calendar year, two distinctive and different time periods. The E.D.'s witness testified erroneously that the Water Co. paid only $24,600 to two (2) employees during the historic test year, because the witness included only the W-2s for the second-half of 2007, but failed to include the W-2s for the first half of 2008, which time is part of the historic test year. Of course, if you only include one-half of the salaries paid during the historic test year, then the total salary amount paid during the historic test year will be one-half. However, the W-2s for the entire historic test year also showed the Water Co. paid the same amount as the Water Co.'s Form 941 Quarterly Federal Tax Returns, $49,200.[41]

When these mistakes were pointed out to the E.D.'s witness, she later corrected herself, noting that the Water Co.'s Form 941 Quarterly Federal Tax Returns were the evidence that showed how much the Water Co. paid in total salaries during the historic test year.[42] The E.D.'s witness, Ms. Pascua, later admitted that the Water Co. did indeed pay $49,200 in salaries during the historic test year.

> *Q. … under Schedule A in A-4, there are 941s for the water company. Correct?*
> *A. Correct.*
> *Q. They are for the test year. Correct?*
> *A. Correct.*
> *Q. And what's the total of those 941s for the test year?*
> *A. The total of the 941, if you look at it is the same as the one on the board (sic), it's 49,200.*
> *Q. So the expenses for the water utility during the test year were 49,200?*

[39] App. Ex. 4, Schedule A.
[40] App. Ex. 16.
[41] Tr. at 532:7-533:4.
[42] Tr. at 502:8-11.

A. That's correct. ..[43].

Tr. at 464:12-23 (Pascua).

What is incomprehensible is why the ALJ latched on to such discredited testimony? Clearly, the E.D.'s witness, Ms. Pascua, confused the fiscal year, which started in July, and the calendar year, which starts in January.

Without any basis, the ALJ recommended denial of Mr. Hammett's entire salary as the Chief Operating Officer of the Water Co. First, the ALJ states he takes judicial notice that Mr. Hammett lives in Mississippi, allegedly "making it difficult to believe that he works full time for the [Water Co.] in Texas."[44] The ALJ did not properly apply or interpret applicable law, agency rules, written policies or prior administrative decisions when he took "judicial notice of this, which the [Water Co.'s] attorney disclosed at the preliminary hearing." Under the Texas Rules of Evidence, "a judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."[45] The residency of Mr. Hammett is not generally known within the territorial jurisdiction of the SOAH, and it is accurately or readily determinable by resorting to sources whose accuracy cannot reasonably be questioned. Moreover, counsel for the Water Co. never stated during the preliminary hearing that that Mr. Hammett lived in Mississippi. During the preliminary hearing, when the Protesters' attorney asked whether Mr. Hammett would be available to testify during the hearing, the Water Co.'s counsel answered that he was unsure, as Mr. Hammett's family (i.e., his brothers and sisters) lived in Mississippi, and Mr. Hammett was

[43] Tr. at 464:12-23.
[44] PFD at 11.
[45] TRE Rule 201 (b).

helping them (his brothers and sisters) to address outstanding issues relating to their parents' estate. Again, the ALJ's belief is one that is reasonably in dispute.

Whether the Water Co.'s counsel made the statement regarding Mr. Hammett's residence is irrelevant. Under Texas law, an attorney's statement is evidence only if given under oath.[46] Counsel for the Water Co. was not under oath at the preliminary hearing when discussing whether Protester's should file a subpoena to require the testimony of Mr. Hammett. The issue is moot.

Apparently, the ALJ reasoned that if Mr. Hammett did not live in Texas, he should not receive a salary for work he performed for the Water Co. as its Chief Operating Officer of the Water Co, insinuating that Mr. Hammett had been paid for work he did not perform.[47] The record is completely void of any evidence that supports the ALJ's belief that Mr. Hammett lives in Mississippi. The only evidence in the record is the above-referenced W-2s,[48] the Water Co.'s Form 941 filings in Texas,[49] the numerous Water Co. cancelled checks,[50] the testimony of the Water Co.'s CPA, Mr. Stewart,[51] and the testimony of the Professional Engineer that worked with Mr. Hammett in preparing the rate application, Mr. Rauschuber,[52] showing that Mr. Hammett lives and works in Texas as the Chief-Operating Officer of the Water Co. There is simply no evidence in the administrative record what so ever that Mr. Hammett lives in Mississippi, nor that Mr. Hammett should not be paid for the real work he performed for the Water Co.

[46] *In the Interest of M.N.*, 262 S.W.3d 799 (Tex. 2008).
[47] PFD at 11, 12.
[48] E.D. Ex. 6; E.D Ex. 7.
[49] App. Ex. 4, Schedule A.
[50] *See e.g.*, App. Ex. 4, Schedule C & L.
[51] Tr. at 533:25-534:8.
[52] App. Ex. 20 at 17; Tr. at 201:10-13.

Again, no evidence means not only a complete absence of evidence, but also evidence that cannot be given legal effect, because the evidence is too weak.[53] The ALJ's belief is based upon either some sort of unknown bias or a simple misunderstanding. Regardless, the belief is without any merit, and it is not evidence that may be used to decide any issue at hand, particularly whether Mr. Hammett worked for the Water Co. or should receive a salary in the future for his work.

The ALJ then claims that if a sole owner of a water company such as Mr. Hammett receives any salary, then the Water Co. must meet his "higher standard of review." As shown above, the ALJ's reading conflicts with prior administrative rulings of the Commission; otherwise, every single investor-owned-utility would be required to go through the ALJ's higher standard if the owner ever received any salary.

To meet this "higher standard of review," the ALJ asserts that the Water Co. must show that Mr. Hammett was paid no more by the Water Co. than he was by the Land Company. However, the Water Co. did make this showing, as the Water Co. submitted the Form 941 Quarterly Federal Tax Returns for the Land Company,[54] and the Water Co.'s CPA testified that Mr. Hammett was the sole employee receiving any salary from the Land Company.[55] Simple review of the Land Co.'s Form 941s shows that amount the Water Co. paid Mr. Hammett as salary is no higher than the price that the Land Company paid Mr. Hammett for his salary.

The ALJ then ignores the only credible evidence regarding Mr. Hammett's duties and his salary. Mr. Rauschuber, the Professional Engineer that worked with Mr. Hammett in preparing

[53] *Southwestern Bell Tel. Co.*, 164 S.W.3d at 621.

[54] App. Ex. 22.
[55] Tr. at 111:1-14.

the rate application, and Mr. Stewart testified about Mr. Hammett's duties and his salary.[56] No other evidence was put forth by any other party on this subject.

The ALJ lacks any basis to discount Mr. Hammett's salary. The preponderance of the evidence standard requires weighing the evidence. The evidence in support of Mr. Hammett's salary includes 1) the Water Co.'s Form 941 Quarterly Federal Employee Tax Returns, which show the amount paid to the employees of the Water Co., including Mr. Hammett, during the historic test year, 2) the factual testimony of Mr. Rauschuber, the Professional Engineer that worked with Mr. Hammett in developing the rate application, 3) the factual testimony of Mr. Stewart, the Water Co.'s CPA, who works regularly with Mr. Hammett on financial matters, and 4) the evidence in the application of Mr. Hammett's almost daily involvement in management and purchasing activities for the Water Co., which includes Water Co.'s 562-page, 4-inch thick binder with every invoice, receipt, or cancelled check for expenses incurred by the Water Co. during the historic test year. There is not any evidence in the record that Mr. Hammett is not the full-time Chief Operating Officer of the Water Co. The ALJ falsely assumes the Mr. Hammett lives in Mississippi, which is not evidence that the Commission may make a decision. The Protester's witness, Mr. Fenner, surmises that Mr. Hammett's salary should be reduced by half, but provides no basis for his supposition. Supposition or surmise is not evidence upon which the Commission may make a decision. The preponderance of the evidence confirms that Mr. Hammett is the Chief Operating Officer for the Water Co., and that the Water Co. paid Mr. Hammett $24,600 during the historic test year.

The ALJ also recommended reducing the full-time operator's salary by 50%, because the operator, Mr. Aaron, was paid by the Land Company **during the year that preceded the test**

[56] App. Ex. 19 at 8:17-18; Tr. at 100:3-5; App. Ex.20 at 17:16-17; Tr. at 201:10-13.

year.[57] Again, the ALJ, like the E.D.'s witness, confuses calendar year with historic test year and the year prior to the historic test year. There is nothing in the record showing that the Land Company paid Mr. Aaron any money during the historic test year. The Water Co.'s Form 941 Quarterly Federal Tax Returns show that the Water Co., not the Land Company, paid Mr. Aaron during the entirety of the historic test year.[58] The Land Company's Form 941 Quarterly Federal Tax Returns show that the Land Company did not pay Mr. Aaron any money during the entirety of the historic test year.[59] Moreover, Mr. Stewart, the Water Co.'s CPA, provided undisputed testimony that Mr. Aaron did not work for the Land Company and did not receive any salary from the Land Company during the historic test year.[60] The Commission can merely guess on what basis the ALJ made up this claim.

Again, the ALJ seems to be using the higher standard of "convincing evidence" instead of preponderance of the evidence when the ALJ says he is "not persuaded regarding the number of hours worked by Mr. Aaron.[61] Persuasion or convincing evidence is not the required standard of proof. Rather, the Water Co. merely has to show that there a scintilla more evidence to support its costs than not. Just a smidgen. If the Water Co. has receipts, or in his case tax records and fact witness testimony, that show Mr. Aaron worked full-time for the Water Co. versus mere speculation on the part of the E.D, the Protesters, or the ALJ, then the Water Co. has more than proven by a preponderance of the evidence that Mr. Aaron was a full-time employee of the Water Co. The undisputed testimony is that Mr. Aaron is the full-time, licensed operator

[57] PDF at 12.
[58] App. Ex. 4, Schedule A.
[59] App. Ex. 22.
[60] Tr. at 111:6-8.
[61] PFD at 12.

for the Water Co.[62] On the other hand, both Messrs. Rauschuber and King testified that one of the Water Co.'s contractors, Professional General Management Services, Inc. ("PGMS"), does not provide full-time, day-to-day operator services for the Water Co.[63] Ms. Pascua, the E.D.'s witness, falsely assumed that Mr. Aaron duplicated the efforts of PGMS. As a result, Ms. Pascua erroneously reduced Mr. Aaron's salary by an arbitrary 50%. Her decision to discount by 50% instead of 10% or 90% was not based on anything in the record, any rule, or any credible methodology. However, the record is clear that PGMS does not duplicate any of the services provided by Mr. Aaron.[64] Therefore, Ms. Pascua's and the ALJ's arbitrary reduction of Mr. Aaron's salary is baseless.

The ALJ did not properly apply or interpret applicable law, agency rules, written policies or prior administrative decisions when he categorically disallowed three-fourths of the Water Co.'s actual salary expense. Regarding salary expenses incurred during the historic test year, the Commissioners should overturn the ALJ's Findings of Fact Nos. 17, 22, 23, 24, 25, 26, 28, 29, and 30 that serve as the basis for his decision, as his findings are not supported by any evidence. The ALJ's findings are based upon irrelevant evidence in the form of the discredited testimony of the E.D.'s witness or the ALJ's simple misunderstanding or false belief regarding the historic test year and the residency of Mr. Hammett, all of which have no legal effect and cannot support any findings.

C. Contract Labor

The ALJ did not properly apply or interpret applicable law, agency rules, written policies or prior administrative decisions when he disallowed $13,000 in expenses for contract labor.

[62] Tr. at 200:4-5; Tr. at 442:8-22.
[63] App. Ex. 20 at 18:11-12; Tr. at 191:2-6; Tr. at 441:23-25.
[64] App. Ex. 20 at 18:11-12; Tr. at 191:2-6; Tr. at 441:23-25.

Moreover, the Commission should overturn the ALJ's findings of fact that serve as the basis of his decision, as his findings are not supported by the evidence in the record.

First, the ALJ recommended disallowing all of the $11,000 paid to Ms. Cutrer for her work as the contract office administrator, claiming that Ms. Cutrer duplicated the efforts of PGMS.[65] But, this claim is another fabrication. The undisputed evidence is that Ms. Cutrer performed general office administrative duties for the Water Co. under a contract, such as answering, via telephone, customer questions regarding bills, filing administrative documents with the TCEQ, paying Water Co. bills, keeping the Water Co.'s books, etc.[66] Mr. King testified that his firm, PGMS, did not perform any of Ms. Cutrer's duties for the Water Co., but, instead, PGMS prepared customers bills and provided backup to the Water Co.'s full-time operator.[67] For example, Mr. King noted that his staff did not answer customer complaints, but that his staff always forwarded those complaints to Ms. Cutrer to answer.[68] There is not any evidence in the record of the ALJ's claim that Ms. Cutrer duplicated the efforts of PGMS.

The ALJ did not properly apply or interpret applicable law, agency rules, written policies or prior administrative decisions when he categorically disallowed the Water Co.'s payment to Ms. Cutrer. Regarding contract labor expenses incurred during the historic test year, the Commissioners should overturn the ALJ's Findings of Fact Nos. 32, 34, 36, and 37 that serve as the basis for his decision to disallow Ms. Cutrer's payment, as his findings are not supported by the any evidence. The ALJ's findings are not based upon any evidence in the record, and his assertions have no legal effect and cannot support any findings.

[65] PFD at 13.
[66] App. Ex. 20 at 18:8-9; Tr. at 204:21-204:5; Tr. at 444:3-10.
[67] Tr. at 441:15-19.
[68] Tr. at 444:28-445:15.

D. Purchased Water – Reservation Fee

The ALJ did not properly apply or interpret applicable law, agency rules, written policies or prior administrative decisions when he disallowed expenses for water purchased from LCRA under contract. Under State law, the Legislature allows a utility to recover all of the reasonable and necessary expenses incurred by the utility.[69] In this case, to obtain potable water from the LCRA, the Water Co. must pay a reservation fee to LCRA. The LCRA reservation fee is charge to all raw water customers of LCRA, including the Water Co. The LCRA reservation fee will be charged by LCRA for each year of the 40-year term of the Water Co.'s contract for water. The Water Co.'s payment of this fee is a reasonable and necessary expense that the Water Co. incurs to provide potable water to its customers.[70] In fact, the Commission has recently found a reservation fee for future water rights to be a reasonable and necessary expense for inclusion in a utility's rate base.[71]

In its request for a rate increase, the Water Co. requested addition of the LCRA Reservation Fee to the Water Co.'s rate base, which the Water Co. is not currently allowed to collect under its tariff.[72] Neither the E.D. nor the Protesters submitted any evidence that the Reservation Fee is unjust or unreasonable. In fact, the witness for the Protesters testified that it would be proper for the Water Co. to collect the Reservation Fee through the Water Co.'s proposed rate. [73]

The ALJ did not properly apply or interpret applicable law, agency rules, written policies, or prior administrative decisions when he categorically disallowed the Water Co.'s collection of

[69] TEX. WATER CODE §13.183.
[70] Tr. at 164:16-18; Tr. at 360:12-22;
[71] *Chisholm Trail Case, supra* note 26, at 5.
[72] Tr. at 164:13-16; Tr. at 166:11-12; Tr. at 221:17-19; Tr. at 259:8-20; Tr. at 360:5-17; Tr. at 612:12-16; Tr. at 667:13-14.
[73] Tr. at 360:12-22; Tr. at

the LCRA Reservation Fee. First, as the Reservation Fee is a reasonable and necessary expense, inclusion within the rate base is allowed under the Texas Water Code. Moreover, in a prior administrative decision, the Commission has already declared that a Reservation Fee is a just and reasonable expense of a utility.

Regarding Reservation Fees, the Commissioners should overturn the ALJ's Findings of Fact Nos. 40, 42-45, and 221, which serve as the basis for his decision to disallow Reservation Fees, as his findings are not supported by the any evidence. The preponderance of the evidence is that the Reservation Fee is a recurring expense of the Water Co. that it cannot collect under the Water Co.' current tariff. More important, the preponderance of the evidence is that the Water Co. does not currently collect the Reservation Fee.

E. Repair and Maintenance

The ALJ did not properly apply or interpret applicable law, agency rules, written policies or prior administrative decisions when he categorically disallowed a known and measurable adjustment for repair and maintenance expenses.[74] The ALJ's decision to disallow certain percentage cost adjustments, but not others, is arbitrary and capricious.

As discussed earlier, the Commission sets utility rates on a projection of future costs, typically referred to as an adjusted test year, which is developed from the historic test year costs adjusted for "known and measurable changes." To adopt the ALJ's approach, the Commission could never include any adjustments to historic data, as increases in customers or changes in prices could never be known or measurable in advance without the aid of a fortune teller, except for those very few instances in which there is an adjustment included within a prior contract.[75] His misapplication and misinterpretation of applicable law, agency rules, written policies, or

[74] PFD at 8.
[75] PFD at 8.

prior administrative decisions would result in utilities never adjusting upward their expected costs for the Adjusted Test Year. This approach is counter to what the Commission customarily allows, which includes an adjustment for inflation due to an increase in the number of customers as shown in the E.D.'s application form.[76]

Mr. Rauschuber, the Water Co.'s Professional Engineer, was the only witness that testified regarding the anticipated increase in the repair and maintenance expenses.[77] No other evidence was presented on this issue. The E.D. merely offered surmise and suspicion regarding Mr. Rauschuber's adjustments, which has no legal effect, is not evidence, and cannot support a verdict or judgment.[78]

The ALJ did not properly apply or interpret applicable law, agency rules, written policies or prior administrative decisions when he disallowed any adjustment to repair and maintenance expenses. The Commissioners should overturn the ALJ's Findings of Fact Nos. 49 and 51 that serve as the basis for his decision, as his findings are not supported by the great weight of the evidence.

F. Office Expense

The ALJ proposes, without any factual, legal, or logical reason, that the Water Co. not recover any of its office expense.[79] The ALJ did not properly apply or interpret applicable law, agency rules, written policies, or prior administrative decisions when he categorically disallowed any office rent. The ALJ also bases his findings upon mere surmise made by an opposing party

[76] App. Ex.4, Application Tab, at 17.
[77] App. Ex. 20 at 20; App Ex. 4, Spreadsheets, Table 1 and Schedule F.
[78] *Id.* (emphasis added).
[79] PFD at 21.

or suspicion of the existence of some evidence, which have no legal effect and cannot support any findings.

The undisputed evidence in the record is that the Water Co. incurred a cost for office rent during the Test Year that totaled $4,070, which reflects rent paid by the Water Co. only.[80] The ALJ assumes facts that simply are not in evidence… that the Water Co.'s contractor, PGMS, provides comprehensive office administration, billing, postage, and customer service.[81] The undisputed evidence is that Ms. Cutrer performed the general office administrative duties for the Water Co. under a contract, including answering the office telephone, answering customer questions regarding bills, filing administrative documents with the TCEQ, paying Water Co. bills, keeping the Water Co.'s books, mailing documents, etc.[82] Mr. King testified that his firm, PGMS, did not perform any of Ms. Cutrer's duties for the Water Co.[83] PGMS only prepared customers bills and provided backup to the Water Co.'s full-time operator.[84] Again, the only facts in evidence regarding the services provided by PGMS is the testimony of its owner, Patrick King. No evidence exists in the record of the ALJ's claim that Ms. Cutrer duplicated the efforts of PGMS.

No evidence is in the record that the Water Co. owns a service building in which it could house a utility office. The E.D., in his closing argument, made the disingenuous claim that the Water Co. could move the office to a service building. The E.D.'s claim is disingenuous, as the service building house the Water Co.'s high service pressure pumps and chlorinator. Besides the noise emanating from the pumps and the explosion, asphyxiation, and other safety issues

[80] App. Ex. 20 at 21:9-10; App. Ex. 4, Table One and Schedule H (Office Expense Table and Invoices).
[81] PFD at 22.
[82] App. Ex. 20 at 18:8-9; Tr. at 204:21-204:5; Tr. at 444:3-10.
[83] Tr. at 441:15-19.
[84] *Id.*

associated with the chlorine and chlorinators, the Commission's own rules do not allow office to be located within the service building.[85] Again, argument is not evidence, and the Commission cannot base its rulings on non-evidence, including the E.D.'s disingenuous closing argument. Moreover, no evidence exists in the record that the Water Co. does not need an office.

The ALJ did not properly apply or interpret applicable law, agency rules, written policies or prior administrative decisions when he disallowed any office expense. The Commissioners should overturn the ALJ's Findings of Fact Nos. 53, 56, 49 and 51 that serve as the basis for his decision, as his findings are not supported by the great weight of the evidence.

G. Auto Expense

The ALJ proposes to disallow the Water Co.'s recovery of its truck loan expense based upon erroneous testimony of the E.D.,[86] ignoring the Commission's own application form. As such, the ALJ did not properly apply or interpret applicable law, agency rules, written policies, or prior administrative decisions when he categorically disallowed the loan payment for the truck. The ALJ also bases his findings upon false testimony by the E.D.'s witness, which has no legal effect and cannot support any findings.

The invoices in the record show that the Water Co. paid $5,663.40 on an annual basis for the truck loan during the Test Year.[87] In his testimony, Mr. Rauschuber recommended reducing this charge by 50% to account for use of the vehicle by Deer Creek Ranch, Inc.[88] Therefore, Mr. Rauschuber recommended that the Adjusted Test Year expense be reduced to $2,832.[89] Further, Mr. Rauschuber testified that at Chisholm Trail, he carried the loan payments for trucks at an

[85] *See e.g.*, 30 TEX. ADMIN. CODE §§ 290.42 (m)(regarding security), 290.46 (a)(operating practices),
[86] PFD at 24.
[87] App. Ex. 20 at 21; App. Ex. 4, Table One and Schedule I (Auto Purchase Table and Invoices); App. Ex. 13, Schedule I, Column D (Auto Purchase Table).
[88] App. Ex. 20 at 21:28-30.
[89] *Id.*; App. Ex. 13, Schedule I, Column D, Line 21 (Auto Purchase Table).

operations and maintenance expense, because utility company trucks have a relatively short service life and must be replaced regularly.[90] In its Finding of Fact No. 19, the Commission previously found that the Chisholm Trail expenses were reasonable and necessary, including Mr. Rauschuber's treatment of the loan payments for trucks.[91]

According to the ALJ, the analysis of the E.D.'s witness indicated that the truck had a 20-year useful life, which suggested to the ALJ that capitalization was the more appropriate treatment.[92] However, the E.D.'s witness was incorrect regarding the Commission's policy on the service life of vehicles. As seen on the Commission's Application Form, the maximum service life for vehicles is five (5) years, not 20 years.[93]

The ALJ did not properly apply or interpret applicable law, agency rules, written policies or prior administrative decisions when he disallowed the loan expense for the Water Co.'s truck. Again, argument is not evidence, and the Commission cannot base its rulings on non-evidence The Commissioners should overturn the ALJ's Findings of Fact Nos. 64, 65, and 66 that serve as the basis for his decision, as his findings are not supported by the great weight of the evidence.

H. Gasoline

The ALJ did not properly apply or interpret applicable law, agency rules, written policies or prior administrative decisions when he categorically disallowed a known and measurable adjustment for the gasoline expense. The ALJ's decision to disallow certain percentage cost adjustments, but not others, is arbitrary and capricious.

[90] Tr. at 621:12-17; App. Ex. 20 at 21.
[91] *Chisholm Trail Case, supra* note 26, at 4.
[92] PFD at 24.
[93] App. Ex. 4, Application, at 10.

The ALJ's approach is counter to what the Commission customarily allows, which includes an adjustment for inflation due to an increase in the number of customers as shown in the E.D.'s application form.

Mr. Rauschuber, the Water Co.'s Professional Engineer, was the only witness that testified regarding the anticipated increase in the gasoline expenses. No other evidence was presented on this issue. The E.D. merely offered surmise and suspicion regarding Mr. Rauschuber's adjustments, which has no legal effect, is not evidence, and cannot support a verdict or judgment.

The ALJ did not properly apply or interpret applicable law, agency rules, written policies or prior administrative decisions when he disallowed any adjustment to the gasoline expense. The Commissioners should overturn the ALJ's Findings of Fact Nos. 70, 71, and 72 that serve as the basis for his decision, as his findings are not supported by the great weight of the evidence.

I. Printing Expense

The ALJ did not properly apply or interpret applicable law, agency rules, written policies or prior administrative decisions when he categorically disallowed a known and measurable adjustment for the printing expense. The ALJ's decision to disallow certain percentage cost adjustments, but not others, is arbitrary and capricious.

The ALJ's approach is counter to what the Commission customarily allows, which includes an adjustment for inflation due to an increase in the number of customers as shown in the E.D.'s application form.

Mr. Rauschuber, the Water Co.'s Professional Engineer, was the only witness that testified regarding the anticipated increase in printing expenses.[94] Clearly, as the Water Co.'s

[94] App. Ex. 20 at 23:1-8; App. Ex. 4, Table One, Item 13, Column E.

number of customers is to increase by 8.7%, the corresponding expense for printing customer bills and notices will increase by at least the same amount. No other evidence was presented on this issue. The E.D. merely offered surmise and suspicion regarding Mr. Rauschuber's adjustments, which has no legal effect, is not evidence, and cannot support a verdict or judgment.

The ALJ did not properly apply or interpret applicable law, agency rules, written policies or prior administrative decisions when he disallowed any adjustment to the printing expense. The Commissioners should overturn the ALJ's Findings of Fact Nos. 76 and 77, which serve as the basis for his decision, as his findings are not supported by the great weight of the evidence.

J. Equipment Rental

The ALJ proposes, without any factual, legal, or logical reason, that the Water Co. not recover any of its equipment rental expense. The ALJ did not properly apply or interpret applicable law, agency rules, written policies, or prior administrative decisions when he categorically disallowed any rental expense. The ALJ also bases his findings upon mere surmise made by an opposing party, which has no legal effect and cannot support any findings.

The evidence in the record is that the Water Co. incurred a cost of $5,083 for equipment rental during the historic test year.[95] Mr. Rauschuber, who has worked with the Water Co. for since 2002, testified that the Water Co. incurred costs of $5,083 for equipment rental during the historic test year.[96] The credit card invoices also show that the Water Co. paid $5,083 for equipment rental during the historic test year.[97] Even the E.D. did not disallow any of the equipment rental expense.[98] Moreover, the Protesters' witness agreed that equipment rental was

[95] App. Ex. 20 at 23:10-19; App. Ex. 4, Table One and Schedule F.
[96] App. Ex. 20 at 23:10-19.
[97] App. Ex. 4, Schedule F.
[98] PFD at 25.

a necessary and reasonable expense.[99] There is not any other evidence in the record regarding equipment rental expense. The preponderance of the evidence is that the Water Co. paid $5,083 for equipment rental during the historic test year.

The ALJ did not properly apply or interpret applicable law, agency rules, written policies or prior administrative decisions when he disallowed any equipment rental expense. The Commissioners should overturn the ALJ's Findings of Fact Nos. 79 and 80, which serve as the basis for his decision, as his findings are not supported by the great weight of the evidence.

K. Insurance Expense

The ALJ did not properly apply or interpret applicable law, agency rules, written policies, or prior administrative decisions when he categorically disallowed a portion of the Water Co.'s insurance expenses. The ALJ also bases his findings upon mere surmise and arbitrary reductions made by an opposing party, which have no legal effect and cannot support any findings.

The evidence in the record is that the Water Co. incurred a cost of $13,240 for insurance during the historic test year.[100] Mr. Rauschuber testified that the Water Co. incurred costs for health insurance and for general and facility damage insurance.[101] The Water Co. requested a 10% increase to $14,559, which would cover the ever rising cost of insurance.

The main issue regarding insurance was health insurance. The E.D. surmised that the health insurance could have included costs for insuring Mr. Hammett's wife, Susan Hammett. With that supposition, the E.D. recommended a disallowance of an arbitrary 50% of the health insurance. Moreover, even IF the health insurance policy covered a family member of an employee, there is no Commission rule or provision in the Water Code that declares family-

[99] Tr. at 383:1-4.
[100] App. Ex. 4, Table One and Schedule L.
[101] App. Ex. 20 at 23:21-30; Tr. at 621-22.

member insurance to not be a reasonable and necessary expense. Employers, including water and wastewater utilities in the State of Texas, regularly pay for family-member insurance. The E.D.'s claim was mere speculation, because when the witness was asked to provide the documents that showed the insurance covered Mrs. Hammett, the witness could not find any evidence to support her statement. The preponderance of the evidence is that the Water Co. paid $13,240 for insurance during the historic test year.

The ALJ adopted the E.D.'s arbitrary reduction of 50%. The ALJ did not properly apply or interpret applicable law, agency rules, written policies or prior administrative decisions when he disallowed a portion of the insurance expense. The Commissioners should overturn the ALJ's Findings of Fact Nos. 82, 84, 88, 89, 90, 91, and 92, which serve as the basis for his decision, as his findings are based upon supposition, which is not evidence and cannot be used to support the Commission's findings.

L. Postage Expense

The ALJ did not properly apply or interpret applicable law, agency rules, written policies or prior administrative decisions when he categorically disallowed a known and measurable adjustment for the postage expense. The ALJ's decision to disallow certain percentage cost adjustments, but not others, is arbitrary and capricious. The ALJ's approach is counter to what the Commission customarily allows, which includes an adjustment for inflation due to an increase in the number of customers as shown in the E.D.'s application form.

Mr. Rauschuber, the Water Co.'s Professional Engineer, was the only witness that testified regarding the anticipated increase in postage expenses. Clearly, as the Water Co.'s number of customers is to increase by 8.7%, the corresponding expense for mailing customer bills and notices will increase by at least the same amount. Moreover, the ALJ's

recommendation ignores the almost weekly increase in postage rates. No other evidence was presented on this issue. The E.D. merely offered surmise and suspicion regarding Mr. Rauschuber's adjustments, which has no legal effect, is not evidence, and cannot support a verdict or judgment.

The ALJ did not properly apply or interpret applicable law, agency rules, written policies or prior administrative decisions when he disallowed any adjustment to the postage expense. The Commissioners should overturn the ALJ's Findings of Fact Nos. 93, 94, and 95, which serve as the basis for his decision, as his findings are not supported by the great weight of the evidence.

M. Payroll Expense

The ALJ did not properly apply or interpret applicable law, agency rules, written policies or prior administrative decisions when he disallowed a portion of the Water Co.'s payroll taxes. The Commission should overturn the ALJ's findings of fact that serve as the basis of his decision, as his findings are not supported by the great weight of the evidence. The ALJ based his analysis on testimony the E.D. later admitted was mistaken.

Payroll taxes are a function of the amount of payroll paid by the Water Co.[102] The ALJ's proposed reduction in payroll taxes was based upon his erroneous understanding of the salaries that the Water Co. incurred during the historic test year. The ALJ based his finding on the E.D.'s confusion over the Water Co.'s salary expenses incurred during the historic test year versus calendar year, two distinctive and different time periods.

[102] PFD at 30-31; Tr. at 384:15-20.

The only credible evidence regarding payroll taxes, the Water Co.'s actual Form 941 Quarterly Federal Employee Tax Returns, show that the Water Co. incurred $3,840 in payroll taxes during the historic test year.[103]

The ALJ did not properly apply or interpret applicable law, agency rules, written policies or prior administrative decisions when he categorically disallowed three-fourths of the Water Co.'s actual payroll tax expense. Regarding payroll tax expenses incurred during the historic test year, the Commissioners should overturn the ALJ's Findings of Fact Nos. 96, 98, and 99 that serve as the basis for his decision, as his findings are not supported by any evidence. The ALJ's findings are based upon irrelevant evidence in the form of the discredited testimony of the E.D.'s witness or the ALJ's simple misunderstanding or false belief regarding the historic test year and the residency of Mr. Hammett, all of which have no legal effect and cannot support any findings.

N. Property and Other Taxes

The ALJ did not properly apply or interpret applicable law, agency rules, written policies or prior administrative decisions when he disallowed a portion of the Water Co.'s property taxes. The Commission should overturn the ALJ's findings of fact that serve as the basis of his decision, as his findings are not supported by the great weight of the evidence.

The Water Co.'s property and other taxes were $6,470 for the historic test year, which was proven by the tax receipts from Hays County and Travis County and the cancelled check to Hays Co. for one-half of the Water Co.'s truck license.[104] The ALJ's proposed reduction in payroll taxes was based upon his erroneous assumption that the E.D.'s witness did some mystical, unknown analysis on the payroll taxes, ignoring the actual receipts and cancelled checks showing the actual amount paid in property taxes during the historic test year. The

[103] App. Ex. 4, Table One and Schedule A.
[104] App. Ex. 13, Table One and Schedule O.

evidence in the record is that the Water Co. paid $6,470 in property and other taxes during the historic test year.[105] The E.D.'s witness made an addition error in developing her number, and her proposed amount for property and other taxes should be disregarded as irrelevant evidence.

The ALJ did not properly apply or interpret applicable law, agency rules, written policies or prior administrative decisions when he categorically disallowed a portion of the Water Co.'s actual property and other taxes. Regarding property and other taxes incurred during the historic test year, the Commissioners should overturn the ALJ's Findings of Fact Nos. 101, 102, and 103 that serve as the basis for his decision, as his findings are not supported by any evidence. The ALJ's findings are based upon irrelevant evidence in the form of the discredited testimony of the E.D.'s witness, which has no legal effect and cannot support any findings.

O. Professional fees

The ALJ did not properly apply or interpret applicable law, agency rules, written policies or prior administrative decisions when he disallowed a portion of the Water Co.'s professional fees incurred during the historic test year. The Commission should overturn the ALJ's findings of fact that serve as the basis of his decision, as his findings are not supported by the preponderance of the evidence.

The evidence in the administrative record shows that the Water Co. incurred costs of $2,650 in accounting expenses during the historic test year.[106] The E.D. arbitrarily discounted the accounting by cutting Mr. Stewart's accounting bill by 50%, claiming that half of the $2,650 in accounting expense was for non-utility expenses. Despite Ms. Pascua's supposition to the

[105] App. Ex. 13, Table One and Schedule O.

[106] App. Ex. 20 at 27:10-11; App. Ex. 4, Table One and Schedule S (Professional Fee Table and Invoices).

contrary, Mr. Stewart, the Water Co.'s CPA, testified that the accounting expenses incurred were for Water Co. services only, not for the Land Company.[107]

The evidence in the administrative records also shows that the Water Co. incurred $9,330 in routine attorneys' fees during the historic test year and an additional $7,588 in one-time attorneys' fees to amend the Water Co.'s tariff to allow the pass through of LCRA water charges to customers.[108] Mr. Rauschuber recommended that the one-time attorneys' fees be recouped through a five-year payout.[109] The attorneys' fees were reasonable and necessary expenses for the Water Co.[110] With his adjustment for the one-time attorneys' fees, Mr. Rauschuber recommended that the Adjusted Test Year include those general, reoccurring expenses, which totaled $9,300 for attorneys' fees, $2,560 for accountant's fees, and $1,517.60 for the attorneys' fees incurred for the pass-through rate case, or a total of $13,377.60.[111]

The E.D.'s witness falsely claims that the Water Co. should not be allowed to recover attorneys' fees for the tariff change as the E.D.'s witness applies the provision for legal fees incurred in a rate case expense noticed under Section 13.187(b) of the Texas Water Code. However, the tariff changes was a filing under Section 13.136 of the Texas Water Code, and, thus, the Water Co. was not allowed under the Commission's rules or the Texas Water Code to recover those attorneys fees during the pendency of that tariff change. A tariff change, as was the addition of the pass through provision, is not a rate change subject to Section 13.187 of the Texas Water Code.

[107] Tr. at 107:22-24.
[108] App. Ex. 20 at 27:19-21; App. Ex. 4, Schedule S (Professional Fee Table and Invoices); App. Ex. 13, Schedule S (Professional Fee Table); Tr. at 623:17-22.
[109] App. Ex. 20 at 27:25-26.
[110] App. Ex. 18 at 6:18-7:7.
[111] App. Ex. 20 at 27:27-29; App. Ex. 13, Table One (Adjusted Cost of Service Table).

The ALJ did not properly apply or interpret applicable law, agency rules, written policies or prior administrative decisions when he categorically disallowed a large portion of the Water Co.'s actual professional fees. Regarding professional fees incurred during the historic test year, the Commissioners should overturn the ALJ's Findings of Fact Nos. 109, 110, 111, 112, 113, 114, and115. The ALJ's findings are based upon irrelevant evidence in the form of the discredited testimony of the E.D.'s witness, which has no legal effect and cannot support the Commission in any findings.

P. Facility Lease Payment

The ALJ proposes, without any factual, legal, or logical reason, that the Water Co. not recover any of its lease expense.[112] The ALJ did not properly apply or interpret applicable law, agency rules, written policies, or prior administrative decisions when he categorically disallowed any office rent. The ALJ also bases his findings upon mere surmise made by an opposing party or suspicion of the existence of some evidence, which have no legal effect and cannot support any findings.

As shown above, the Commission previously approved the Water Co.'s lease of the Land Company's facilities as part of the CCN transfer. The ALJ now urges the Commission to ignore the Commission's prior action and disallow these same expenses.

The Commission's rules require that on or before the 120th day before the effective date of a lease for a system's facilities, the utility must file an application to lease those facilities with the Commission. The Water Co. filed such lease, which was reviewed and approved by the Commission, authorizing the Water Co. to lease the Land Co.'s facilities.[113] The upper left hand

[112] PFD at 41.
[113] App. Ex.26 (Staff Recommendation Approving Lease of Facilities); App. Ex. 27 (Commission Order Authorizing Lease of Facilities and Transfer of CCN); Tr. at 393:13-24.

corner of the Order states specifically that the Water Co. is to lease the facilities.[114] The E.D. would not allow the Sale, Transfer, or Merger Application to proceed until the E.D. reviewed and approved the lease.[115] The payment amount in the lease approved by the Commission under Section 291.109 of the Commission's rules is $1,125 per month, or $13,500 per year.[116]

The ALJ says he is not "persuaded," again using a higher standard of review than the required preponderance of the evidence.[117] The ALJ appears to be confused about what was leased and what the Commission approved when it reviewed the Water Co.'s Application for Sale, Transfer, or Merger. The Land Company's CCN was not leased; the Commission transferred the CCN.[118] What was leased was the water system infrastructure.[119] When the Commission reviewed the Application for Sale, Transfer, or Merger, the Commission reviewed the lease.

Under its rules, the Commission approved the lease only after it determined that the transaction, including the lease, was in the public interest.[120] As part of that review, the Commission considered whether the retail public utility that acquired the facilities via lease (in this case, the Water Co.) was capable of rendering adequate and continuous service to every consumer within the certificated area, including consideration of whether the service currently provided to the existing customers was adequate.[121] The Commission could not approve the lease and associated transfer if conditions of a judicial decree, compliance agreement, or other

[114] App. Ex. 27 (Commission Order Authorizing Lease of Facilities and Transfer of CCN).
[115] App. Ex. 24 (Letter of January 21, 2005); App. Ex. 25 (Letter of March 1, 2005).
[116] App. Ex. 11 (Surface and Facilities Lease); App. Ex. 4, Table One.
[117] PFD at 37.
[118] App. Ex. 27 (Commission Order Authorizing Lease of Facilities and Transfer of CCN).
[119] App. Ex. 11 (Surface and Facilities Lease).
[120] 30 TEX. ADMIN. CODE §291.112 (c)(5).
[121] *Id.;* TEX. WATER CODE §13.246 (c).

enforcement order had not been substantially met.[122] Moreover, the Commission had to review and condone the history of the Land Company in complying with the requirements of the Commission or the Texas Department of Health.[123] Finally, the Commission had to approve the financial integrity of the Water Co. prior to approving the lease of facilities and transfer of the CCN, including whether the Water Co. had the financial integrity to make the lease payments![124] The Commission already approved the lease, including the associated lease payment.

Ignoring the four corners of the Commission-approved lease, the ALJ then discussed a rate order from nearly 25 years ago. The ALJ agrees with the Water Co. that the factual conditions, which lead to the Commission's prior discounting of the value of assets then owned by the Land Company in 1986, have changed dramatically.[125] However, the ALJ then fails to consider the costs of those assets. The evidence in the administrative record regarding the value of those assets is a list of assets attached to the lease and Mr. Rauschuber's valuation of those assets in the original application.[126] To his new, arbitrary valuation of the assets, the ALJ applies an equally arbitrary rate of return to come to the arbitrary conclusion that lease amount is not a reasonable expense.[127]

The ALJ did not properly apply or interpret applicable law, agency rules, written policies or prior administrative decisions when he categorically disallowed the Water Co.'s lease payment. Regarding lease payments incurred during the historic test year, the Commissioners should overturn the ALJ's Findings of Fact Nos. 120, 121, 122, 123, 124, 125, 126, 128, 129, 130, 131, 132, 133, 134, and 135, that serve as the basis for his decision, as his findings are not

[122] 30 TEX. ADMIN. CODE §291.112 (c)(5).
[123] *Id.*
[124] *Id.*
[125] PFD at 40.
[126] App. Ex. 11 (Surface and Facilities Lease); App. Ex. 4, Spreadsheet, Schedule V, at 24.
[127] *Id.*

supported by any evidence. The ALJ's findings are based upon irrelevant evidence in the form of the discredited testimony regarding the leased assets or the Commission's prior approval of the lease, all of which have no legal effect and cannot support any findings of the Commission.

VI.
EXCEPTIONS AND ARGUMENTS – RETURN ON INVESTMENT

A. Invested Capital - Rate Base

1. Invested Assets

The ALJ did not properly apply or interpret applicable law, agency rules, written policies or prior administrative decisions regarding the capital invested into the Water Co. He ignores a basic tenet of ratemaking for IOUs: the investor must receive a return on its investment. The investor must be compensated for his risk in making the investment to provide utility service to the public. Otherwise, if the Commission were to adopt the ALJ's approach, an investor would have no financial incentive to invest in the water system, the systems would deteriorate, and the public would not receive a continuous and adequate supply of water.

If an investor is not allowed to make a return on what is invested, then the investor has NO INCENTIVE to make the necessary investments to keep the utility operational or to construct new facilities. Why would you invest $1.6 million in the construction of new facilities if the Commission were to not allow you to earn enough money to make the loan payments? More important in this matter, why would your risk $2,271,000 in assets to obtain the necessary loan to build the $1.6 million in new facilities if the Commission were to not allow a return on what you have at risk? The whole purpose of a return is to compensate the investor for the risk taken in investing in the utility. That's why the rate of return is based upon the risk taken. In

this case, the investor has risked the $2,271,000 in assets PLUS the $1,325,000 in new construction.

Without any reference to the evidentiary record, the ALJ asserts that the property pledged by the Water Co.'s investors as collateral for the loans necessary to pay for the Commission-required system improvements should not be considered when calculating the Water Co.'s return on investment.[128] However, the ALJ's assertion is inconsistent with standard ratemaking principles and the law. The learned treatises discussed in this hearing, the AWWA Manuals, note that the rate base for the utility should represent the capital supplied by the utility's investors. "In today's regulatory environment, the guiding principle in determining the appropriateness of a rate base and its various components is that the amount should represent the capital supplied by the investor. … The use of the investor-supplied capital principle appears to be well-entrenched in the regulatory community."[129] The AWWA statement mirrors the Texas Legislature's requirement that the rate allow the utility's investors to earn a ". . . a return on its invested capital. . . ."[130] Moreover, the AWWA statement, as well as the Texas Water Code, immolates the capital attraction requirement of the U.S. Supreme Court's landmark decisions on utility rates in the *Hope* and *Bluefield* decisions.[131] The purpose of a return on investment is to

[128] PFD at 45.
[129] App. Ex. 44, AWWA M1 Manual, at 38; App. Ex. 32, AWWA M35 Manual, at 37.
[130] TEX. WATER CODE ANN. §13.183(a)(1).
[131] A public utility is entitled to such rates as will permit it to earn a return on **the value of the property which it employs for the convenience of the public** equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. *Bluefield Waterworks & Improvement Company v. Public Service Commission of West Virginia*, 262 U.S. 679, 692-693 (1923)(emphasis added).

From the investor or company point of view, it is important that there be enough revenue not only for operating expenses, but also for **the capital costs of the business**. **These include service on the debt** and dividends on the stock. By that standard the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks. **That return, moreover, should be sufficient to assure confidence in the**

compensate the investor for the risk taken in investing in the utility. The ALJ's understanding of the law in regard to capital investments is flat-out wrong.

The ALJ quibbles over the wording in the Water Code, which uses the term "utility" in place of the use of the term investor used by the AWWA and the U.S. Supreme Court in the *Hope* and *Blue* decisions. Specifically, the Legislature stated that the rates must be set to allow "the utility a reasonable opportunity to earn a reasonable return on its invested capital. …"[132] However, if you take the ALJ's reading of the statute literally, a utility would magically have to be able to invest in itself and not obtain capital from others. In other words, a utility could only earn a return on money that rained from heaven. The utility would have to obtain collateral-free loans to pay for millions in infrastructure costs. The ALJ's argument is obtuse, at best.

As evidenced by the record, the total amount of invested capital employed for the convenience of the public was $3.596 million.[133] Without the owner risking $3.596 million, he could not have obtained the necessary loan to pay for the improvements to the water system. No one submitted any evidence to the contrary.

The ALJ did not properly apply or interpret applicable law, agency rules, written policies or prior administrative decisions when he categorically disallowed the Water Co.'s lease payment. Regarding lease payments incurred during the historic test year, the Commissioners should overturn the ALJ's Findings of Fact Nos. 138 and 141, that serve as the basis for his decision, as his findings are not supported by any evidence or the law. The ALJ's findings are not based upon any evidence in the record, and his arguments cannot support any findings of the Commission. The ALJ bases his findings upon mere surmise made by an opposing party or

---

financial integrity of the enterprise, so as to maintain its credit and to attract capital. *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944)(emphasis added).

[132] TEX. WATER CODE ANN. § 13.183(a)(1).

[133] App. Ex. 33; App. Ex. 34; Tr. at 654:17-24.

suspicion of the existence of some evidence, instead of the preponderance of evidence, which have no legal effect and cannot support any findings.

2. Assets Owned by Utility

The ALJ did not properly apply or interpret applicable law, agency rules, written policies, or prior administrative decisions when he adjusted downward the value of assets owned by the Water Co. The ALJ also bases his findings upon mere surmise made by an opposing party or suspicion of the existence of some evidence or the testimony of unqualified witnesses, all of which have no legal effect and cannot support any findings.

a. New Ground Storage Tank

The uncontroverted testimony in the record is that the construction of the new water tank was based upon design requirements necessary to serve the existing customers. All witnesses testified that the design of the system, including the design size of the water tank was proper and in accordance with the requirements of the Commission.[134] The design of the new facilities had to take into account the contractual obligations of the Water Co. to the LCRA, including the provision of an air gap.[135] The design engineer, Mr. Rick Wheeler, P.E., testified that the LCRA requirement for an air gap necessitated larger facilities for the Water Co. improvements.[136] The Water Co.'s professional engineer then made several calculations during the hearing to demonstrate that the new tank, coupled with the capacity of the original tank, was barely sufficient in size to cover the number of existing customers.[137]

Originally, the E.D. claimed that the ALJ should disallow 88% of the cost of the Water Co.'s tank. Importantly, , and ignored by the ALJ, the E.D's witness admitted on the stand that

[134] Tr. at 410:24-411:1; Tr. at 548:12-13.
[135] Tr. at 26:21-27:8.
[136] *Id.*
[137] Tr. at 29:11-32:11; 35:11-14.

he simply used the TCEQ design criteria, a minimum standard, to prepare his used and useful analysis, not the actual design requirements of the water tank.[138] He also based his opinion on his misreading of a letter from Mr. Wheeler's firm, in which the letter stated that under the LCRA water contract, the maximum authorized daily purchase rate of the water from LCRA could serve up more customers than currently exist.[139]

As his used and useful analysis of the water tank was not based on the actual design requirements for that tank, the E.D.'s witness failed to show via any sound methodology what part of the Water Co.'s new water tank was used and useful. Moreover, he admitted that he was unqualified to design water tanks in the State of Texas, as he is not a Texas Licensed Professional Engineer.[140] The evidence in the record is clear -- the Water Co.'s new 100,000 gallon tank is completely used and useful.

b. Well Plugging

The Water Co. included the costs incurred by the Water Co. to plug two wells, the old North well and the old South well.[141] The Commission required the plugging of these wells under an Agreed Order.[142] The cost incurred for complying with a Commission order for action is a reasonable and necessary expense of the Water Co.

The E.D.'s witness testified that the wells had been fully depreciated,[143] but depreciation of the wells has nothing to do with the new costs to plug those wells. The cost of plugging those wells is a current cost, and should the Water Co. must be allowed to recover those costs of operation.

[138] Tr. at 548:10-550:5; 572:7-24.
[139] E.D. Ex. 2 at 15; AGX Ex. 2, BWF-8.
[140] Tr. at 584:3-586:2.
[141] App. Ex. 4.
[142] E.D. Ex. 2, BDD-8, TCEQ Agreed Order 2002-0773-PWS-E; effective April 10,2005, at 6.
[143] E.D. Ex. 2 at 16.

c. Well Pumps

The Water Co. included costs incurred for the installation of well pumps at the existing well site.[144] The original cost for installing the well pump in questions was $4,282.41.[145] The testimony in the administrative record is that this well and associated pump is now used to provide emergency water supply to the customers.[146]

The E.D.'s witness claimed that these well pumps were not used and useful to the Water System; however, the witness' statement was based purely on speculation and not on any evidence in the record.

d. Fire Hydrants

The Water Co. installed flush valves, called fire hydrants, at a cost of $23,800.[147] In his pre-filed testimony, the E.D.'s witness originally recommended disallowing these costs, claiming the flush valves were not used and useful.[148] However, the E.D.'s witness ignores the Commission's rules, which require regular flushing of the water system.[149]

e. Truck

As discussed above in the section regarding Auto Expense, it is proper to treat the loan payment for the truck as an operating expense. Moreover, as also shown above, the E.D.'s witness, and subsequently the ALJ, used the wrong service life when determining whether the expense was a loan or the truck should be treated as a depreciable asset.

f. Summary of Assets Owned by the Water Co.

[144] App. Ex. 4, Schedule X (Well Cost Table and Invoices).
[145] *Id.*
[146] App. Ex. 20 at 18:26-27.
[147] App. Ex. 4, Schedules Y and Z (Transmission and Plant Cost Tables and Invoices).
[148] Ed. Ex. 2 at 17.
[149] The system shall be provided with sufficient valves and blowoffs so that necessary repairs can be made without undue interruption of service over any considerable area and for flushing the system when required. 30 TEX. ADMIN. CODE §290.44(d)(5); see e.g. 30 TEX. ADMIN. CODE §290.46(q)(3).

The ALJ did not properly apply or interpret applicable law, agency rules, written policies or prior administrative decisions when he categorically reduced the assets owned by the Water Co.'s invested capital or rate base. Regarding the Water Co.'s assets, the Commissioners should overturn the ALJ's Findings of Fact Nos. 143, 145, 146, 148-159, 166, 167, 169-173, 175, 176, 179-181, which serve as the basis for his decision, as his findings are not supported by any evidence or the law. The ALJ's findings are not based upon any evidence in the record, and his arguments cannot support any findings of the Commission. The ALJ bases his findings upon mere surmise made by an opposing party or suspicion of the existence of some evidence, instead of the preponderance of evidence, which have no legal effect and cannot support any findings.

3. Alleged Customer Contributions.

The Water Co. has collected $167,781 from customers as part of a surcharge from a prior rate case.[150] The allowable use of that surcharge was for obtaining water from LCRA.[151]

As a result of the 2006 drought, the Water Co. had to purchase hauled water to provide service to its customers.[152] With failure in Deer Creek's Trinity groundwater supplies, the Water Co. incurred significant costs for hauling potable drinking to supply to its customers while Deer Creek negotiated a wholesale water purchase agreement with the LCRA and constructed associated water delivery facilities.[153]

Instead of adopting another, new surcharge as proposed by the E.D., the Water Co., in this rate application, applying the funds collected from this old surcharge to cover the cost that

[150] App. Ex. 4, Schedule DD (Summary of Surcharge Collected).
[151] App. Ex. 38.
[152] *Id.*
[153] App. Ex. 20 at 19:1-6; App. Ex. 38 (Summary of Surcharge Collected); App. Ex. 10 (Summary of Hauled Water Purchases).

would have to recovered through a new surcharge for the hauled water.[154] Mr. Rauschuber testified that the cost of the hauled water during the construction of the LCRA interconnect was a capital cost to the system similar to an interest payment during construction.[155]

If the Commission proceeds as proposed by the ALJ and the E.D., the old surcharge for connection to the LCRA system would simply be replaced with a new surcharge for the hauled water, which would be less fair and more expensive for the customers than Mr. Rauschuber's approach.[156] Instead, Mr. Rauschuber recommended that the funds collected under the old surcharge first be applied to the hauled water costs, then to reduce the net plant value of the Water Co.[157]

In essence, the ALJ is recommending that the old surcharge be used to reduce the Water Co.'s net plant investment, but at the same time not allow the Water Co. to recover any costs incurred for hauling water to customers when the Water Co.'s well went dry.[158]

The ALJ did not properly apply or interpret applicable law, agency rules, written policies or prior administrative decisions when he categorically reduced the assets owned by the Water Co.'s invested capital or rate base due to the alleged customer contributions. Regarding the Water Co.'s assets, the Commissioners should overturn the ALJ's Findings of Fact No. 184, which serves as the basis for his decision, as his findings are not supported by any evidence or the law. The ALJ's findings are not based upon any evidence in the record, and his arguments cannot support any findings of the Commission. The ALJ bases his findings upon mere surmise made by an opposing party or suspicion of the existence of some evidence, instead of the

[154] Tr. at 667:18-668:2; see also App. Ex. 4, Schedule DD (Summary of Surcharge Collected); App. Ex. 10, (Summary of Hauled Water Purchases).
[155] Tr. at 223:1-13; Tr. at 169: 1-25.
[156] Tr. at 574:25-575:14.
[157] App. Ex. 4, Schedule CC; App. Ex. 4, Schedule DD.
[158] PFD at 57.

preponderance of evidence, which have no legal effect and cannot support any findings.

B. Rate of Return

1. Water Co. used Commission-Approved Rate for Gross Rate of Return

The Water Co. proposed using a rate of return of 12% on its invested capital.[159] In Finding of Fact No. 73 in the *Aqua Case*, the Commission found the same rate of return, 12%, to be reasonable in light of a water utility's "risk and the capital-intensive nature of water and sewer utilities and is consistent with the returns available from other investments of similar risk."[160] This rate is also the same as that published by the E.D.'s staff as part of the Annual Reporting Instructions.[161] This rate is decided Commission policy, based on the Commission's prior administrative decisions and written policies.

The E.D.'s witness attempted to use a complicated calculation to determine a different rate of return, but made multiple mathematical mistakes and used a bond rates for municipal utilities instead of small, investor-owned utilities.[162] Also, the E.D.'s witness forgot to include the cost of debt as part of her calculation to determine the overall rate of return.[163] The E.D. erroneous claims that the Commission no longer grants the presumptive rate of return, based upon his misunderstanding of the Commission's Finding of Fact Nos. 53 and 55 in the November 12, 2009 Double Diamond Utilities Co. rate case. In that case, Double Diamond Utilities ("DDU") did not rely upon the Commission's approved rate in the *Aqua Case* or the presumptive rate of return methodology found in the Commission's rate application and Annual Report Instructions to calculate its rate of return. Instead, DDU used the ROR Worksheet in its

[159] App. Ex. 20 at 34.
[160] *Aqua Order*, *supra* note 28, at 15.
[161] E.D. Ex. 3, Section IV.B., at 12 (An average equity return established by the staff each yea and included with the Annual Report Instructions).
[162] E.D. Ex. 1, EP 4 and EP 7.
[163] *Id.*

application to calculate its rate of return.[164] The Commission, in the DDU case, held that DDU erroneously calculated a 12% rate of return, not because it relied on the rate approved by the Commission in the *Aqua Case* or on the presumptive rate in the Annual Report, but because it failed to properly fill out and substantiate the claims it made on its rate-of-return worksheet.[165] The Chairman's prior comment that he prefers the use of the rate-of-return worksheet does not obviate the Commission's precedential holding in the *Aqua Case* or the use of the presumptive rate of return allowed by the Commission's own Application Form. As the ALJ acknowledge, there is no evidence of the Commission ever setting a rate lower than 10% in any prior case.[166]

2. Cost of Debt

At the end of the test year, the Water Co. owed Frost Bank $1,596,816 for construction loans, with an annual interest rate of 6.0%.[167] No party submitted any evidence to the contrary.

3. Net Rate of Return

Based upon Water Co.' rate of return, the evidence in the record was that the return on investment consistent with the statutory and regulatory requirements is a gross amount of $159,272.[168] However, due to the annual, interest-only loan payment of $95,809 for the outstanding infrastructure loan from Frost Bank, the Total Taxable Income is equal to $63,463.[169] As such, the effective rate of return included in the Water Co.'s rate design is only 5.0%.[170] The Water Co.'s net rate of return is significantly less than even the E.D.'s initial

[164] November 12, 2009 Commission Order in the Double Diamond Utilities Co. rate case, SOAH Docket No. 582-08-0698; Finding of Fact No. 51, at 8.
[165] *Id.*, Finding of Fact Nos. 51-56.
[166] PFD at 61.
[167] PFD at 62; App. Ex. 4, Schedule C; Tr. at 178:21-179:9.
[168] App. Ex. 20 at 35:25.
[169] *Id.* at 28:9-10.
[170] App. Ex. 20 at 36:16-17; Water Co. Closing Argument at 30.

7.45%.[171]

As previously discussed and as shown by the ALJ, the E.D.'s witness made multiple mistakes in her calculation methodology of the net rate of return and her calculations are unreliable.[172] However, the ALJ then ignores the preponderance of the evidence in the record, and he arbitrarily adopts a gross rate of return of 6%. By adopting the same gross rate of return as the lender's loan rate of 6%, the ALJ adopts an effective rate of return of 0%. In essence, the ALJ is saying that although Mr. Hammett has placed $3.596 million at risk, he receives NO return on his investment. None.

4. Summary of Rate of Return

The ALJ did not properly apply or interpret applicable law, agency rules, written policies or prior administrative decisions when he categorically deleted the Water Co.'s rate of return. Regarding the Water Co.'s rate of return, the Commissioners should overturn the ALJ's Findings of Fact Nos. 185-204, which serve as the basis for his decision, as his findings are not supported by the preponderance of the evidence. The ALJ's findings on rate of return are not based upon any evidence in the record, and his arguments cannot support any findings of the Commission. The ALJ bases his findings upon mere surmise made by an opposing party or suspicion of the existence of some evidence, instead of the preponderance of evidence, which have no legal effect and cannot support any findings.

C. Return on Investment

The ALJ did not properly apply or interpret applicable law, agency rules, written policies, or prior administrative decisions when he adjusted downward the value of assets owned by the Water Co. The ALJ also bases his findings upon mere surmise made by an opposing party or

[171] E.D. Ex. 1 at 17-18; E.D. Ex. 1, EP 7.
[172] PFD at 64.

suspicion of the existence of some evidence or the testimony of unqualified witnesses, all of which have no legal effect and cannot support any findings.

As shown above, rates that include a return on invested capital are just and reasonable under the AWWA Manuals, the Commission rules, State law, and the U.S. Supreme Court findings in the *Hope* and *Bluefield* decisions. The Water Co. calculated a gross return on investment of $159,272.[173] However, due to the annual, interest-only loan payment of $95,809 for the outstanding infrastructure loan from Frost Bank, the return on investment before taxes is equal to $63,463.[174] This return on investment is the equivalent of a net rate of return of approximately 5.0%.[175]

The E.D.'s calculation resulted in a gross return on investment of $55,473, and a net annual loss of $40,336.[176] As the ALJ accurately notes, a net return less than $0 will result in a financial death spiral for the Water Co., and the Water Co. will never be able to repay its loans. However, the ALJ's arbitrary use of a gross rate of return of 6.0% would also result in a financial death spiral, as the Water Co.'s gross return on investment of $62,294 is still $33,515 short of the amount necessary to have the net return on investment be equal to $0. And, the ALJ's calculation still does not provide the Water Co. with one penny return on its over $1 million in new infrastructure construction. Not one.

The ALJ did not properly apply or interpret applicable law, agency rules, written policies or prior administrative decisions when he categorically set the Water Co.'s return on investment at an amount less than its annual, interest-only loan payment. Regarding the Water Co.'s return on investment, the Commissioners should overturn the ALJ's Findings of Fact Nos. 206-07,

[173] App. Ex. 20 at 35:25.
[174] *Id.* at 28:9-10.
[175] App. Ex. 20 at 36:16-17.
[176] E.D. Ex. 1, EP 2.

which serve as the basis for his decision, as his findings are not supported by the preponderance of the evidence. The ALJ's findings on return on investment are not based upon any evidence in the record, and his arguments cannot support any findings of the Commission. The ALJ bases his findings upon mere surmise made by an opposing party or suspicion of the existence of some evidence, instead of the preponderance of evidence, which have no legal effect and cannot support any findings.

VII.
ANNUAL DEPRECIATION

The ALJ did not properly apply or interpret applicable law, agency rules, written policies or prior administrative decisions when he reduced the Water Co.'s annual depreciation. The ALJ based his findings upon mere surmise made by an opposing party or suspicion of the existence of some evidence, instead of the preponderance of evidence, which have no legal effect and cannot support any findings.

The Water Co.'s annual depreciation amount is 36,210.[177] This depreciation amount is based upon the Water Co.'s actual net plant value, which includes the Water Co.'s new water tank.[178]

The ALJ adopted the annual depreciation amount of the E.D. witness; however, that depreciation amount was based on the E.D.'s improper disallowance of assets, as shown above.

The ALJ did not properly apply or interpret applicable law, agency rules, written policies or prior administrative decisions when he categorically set a lower amount for the Water Co.'s annual depreciation. Regarding the Water Co.'s annual depreciation amount, the Commissioners should overturn the ALJ's Findings of Fact No. 208, which serves as the basis for his decision, as

[177] App. Ex. 20 at 27-28; App. Ex. 4, Table One; App. Ex. 13, Table One.
[178] *Id.*

his finding is not based upon the preponderance of the credible evidence, and his arguments cannot support any findings of the Commission.

VIII.
OTHER EXPENSES

A. Federal Income Tax

The ALJ did not properly apply or interpret applicable law, agency rules, written policies or prior administrative decisions when he summarily deducted the Water Co.'s federal income tax. The ALJ bases his findings upon mere surmise made by an opposing party or suspicion of the existence of some evidence, instead of the preponderance of evidence, which have no legal effect and cannot support any findings.

The Water Co. calculated its federal income tax for the adjusted test year to be $9,519.[179] This amount was calculated using the U.S. Internal Revenue Service Form 1120 and the Water Co.'s next income of $63,463.

The fallacy of the ALJ's entire approach to this rate case is shown by his recommendation on federal income tax. The ALJ states that the Water Co. should recover $0 in federal income tax, as the ALJ's proposed revenue will result in the Water Co. incurring an annual operating loss due to his prevention of the Water Co. from receiving any return on its investment.[180]

The ALJ did not properly apply or interpret applicable law, agency rules, written policies or prior administrative decisions when he categorically dismissed the Water Co.'s recovery of any federal income tax. Regarding the Water Co.'s annual depreciation amount, the Commissioners should overturn the ALJ's Findings of Fact No. 209-212, which serve as the

[179] App. Ex. 20 at 27-28.
[180] PFD at 67.

basis for his decision, as his findings are not based upon the preponderance of the credible evidence or applicable law, agency rules, written policies or prior administrative decision. His supposition and arguments cannot support any findings of the Commission.

B. Rate Case Expenses

The ALJ did not properly apply or interpret applicable law, agency rules, written policies or prior administrative decisions when he negated all of the Water Co.'s rate case expenses. The ALJ bases his findings upon mere surmise made by an opposing party or suspicion of the existence of some evidence, instead of the preponderance of evidence, which have no legal effect and cannot support any findings.

The undisputed evidence in the record is that the Water Co. had incurred $27,230 in rate case expenses at the time the Water Co. filed its application to change rates.[181] The Rate Case Expenses included those expenses that the Water Co. incurred for the preparation and filing of the 562-page Application.[182] Evidence in the record showed that these costs reasonable and necessary expenses for the Water Co.[183] These expenses do not include any expenses incurred since February 27, 2009, including those expenses incurred for the Preliminary Hearing, responses to relentless and repetitive Discovery questions, preparation of Direct Testimony, or expenses incurred during the Contested Case Hearing itself, or, eventually, the costs to be incurred for presentation to the Commission.[184] No other evidence was entered into the record regarding rate case expenses.

When the Water Co. attempted to amend numbers in its direct testimony, including additional rate case expenses incurred after the filing of pre-filed, the ALJ unreasonably denied

[181] App. Ex. 20 at 29; PFD at 67.
[182] App. Ex. 20 at 28:24-25.
[183] *Id*. at 29:3-4; App. Ex.18.
[184] App. Ex. 20 at 28:25-30.

the Water Co.'s explicit right to amend its direct testimony.[185] The ALJ stated at the hearing that the Water Co. was under an obligation to pre-file all of its testimony, but pre-filing testimony on costs incurred after the date of filing that testimony is literally impossible. Although the documents were made available to all parties as part of production, the ALJ denied the Water Co.'s right to amend its testimony.[186] When the Water Co. tried at its next opportunity to offer the additional rate case expenses, the ALJ again disallowed testimony concerning legal and expert witness fees.[187] The effect of these rulings has the potential to significantly harm the Water Co. If there is no evidence in the administrative record to substantiate the Water Co.'s operating expenses incurred after the date of pre-filing testimony, including reasonable and necessary legal and expert witness fees incurred during the contested rate case hearing, the Water Co. cannot recover these significant costs it is otherwise afforded both by statute and rule.[188] At the same time that the ALJ disallowed the Water Co.'s right to amend its direct testimony or submit rebuttal testimony, the ALJ allowed both the E.D. and AGX to file rebuttal testimony as part of their direct cases, over the objections of the Water Co.[189]

Not only is such bolstering disallowed in SOAH hearings, where parties file direct testimony and exhibits before the beginning of hearing, but it is prohibited unless it is rebuttal evidence:

> [t]he applicant shall present evidence to meet its burden of proof on the application, followed by the protesting parties, the public interest counsel, and, if named as a party, the executive director. In all cases, the applicant shall be allowed a rebuttal. Any party may present a rebuttal case when another party presents evidence **that could not have been reasonably anticipated.**[190]

[185] Tr. at 136: 18-21.
[186] Tr. at 598:17-18.
[187] Tr. at 601:25-602:2.
[188] TEX. WATER CODE ANN. §13.185; 30 TEX. ADMIN. CODE §291.28.
[189] Tr. at 291 (offer of AGX Ex. C0; Tr. at 456 (revised testimony of Elsie Pascua); Tr. at 546 (revised testimony of Brian Dickey.)
[190] 30 TEX. ADMIN. CODE §80.117(b) (emphasis added).

Neither AGX's nor the Executive Director's new testimony qualifies as rebuttal evidence. Rebuttal evidence is permissible if it is offered solely as impeachment or rebuttal, it could not have been anticipated and was not responsive to a direct discovery request.[191] AGX's new direct testimony was not only directly responsive to The Water Co.'s discovery requests, but it was anticipated. Protesters' witness specifically testified that his significantly revised spreadsheet was "amended based on the supplemental response to requests for information and review of the E.D.'s pre-filed testimony."[192] It is uncontroverted that Protesters possessed Staff's prefiled testimony at least three (3) months prior to hearing. This testimony was clearly anticipated – for a lengthy time in fact. In the same vein, the E.D.'s witness was allowed to testify improperly on an errata sheet that she clearly prepared ahead of hearing with significant changes to the revenue requirement, the Water Co.'s employment matter, etc. This new testimony was ostensibly offered to refute Mr. Rauschuber's pre-filed testimony, which Ms. Pascua possessed since December 2009. The E.D. also used this second "bite of the apple," to improperly "rehabilitate" the pre-filed testimony of its witnesses – a practice that is prohibited by TCEQ rules. These tactics do not function to make the administrative record clearer or fuller, but only to obfuscate it.

The ALJ did not properly apply or interpret applicable law, agency rules, written policies or prior administrative decisions when he categorically dismissed the Water Co.'s recovery of its rate case expenses. Regarding the Water Co.'s rate case expenses, the Commissioners should overturn the ALJ's Findings of Fact Nos. 213-217, which serve as the basis for his decision, as his findings are not based upon the preponderance of the credible evidence or applicable law,

[191] *Aluminum Co. of Am. v. Bullock*, 870 S.W.2d, 2, 4 (Tex. 1994).
[192] Tr. at 286:3-6.

agency rules, written policies or prior administrative decision. His supposition and arguments cannot support any findings of the Commission.

IX.
SUMMARY OF EXPENSES

The ALJ did not properly apply or interpret applicable law, agency rules, written policies or prior administrative decisions when he asked the E.D. to submit a recalculation and summary of the Water Co.'s expenses. The ALJ bases his findings upon mere surmise made by an opposing party or suspicion of the existence of some evidence, instead of the preponderance of evidence, which have no legal effect and cannot support any findings.

The Water Co.'s witness, Mr. Rauschuber, testified to the proper summary of expenses.[193]

If the ALJ is asking for further recalculations, he should reopen the record. In effect, he says he needs a recalculation of the revenue requirement, because he was unable to determine the revenue requirement of the Water Co. as the trier of fact.

X.
FINANCIAL INTEGRITY

The ALJ did not properly apply or interpret applicable law, agency rules, written policies or prior administrative decisions when he states that the rates should protect the Water Co.'s financial integrity. The ALJ bases his findings upon mere surmise made by an opposing party or suspicion of the existence of some evidence, instead of the preponderance of evidence, which have no legal effect and cannot support any findings.

This case is the latest in a series of cases involving a small, but complicated water system

[193] Tr. at 609-670.

in central Texas. The Water Co., which currently serves 402 customers, is seeking a rate increase, because the current previously-approved rates do not provide sufficient revenue to cover the Water Co.'s reasonable and necessary operating expenses and allow for a reasonable rate of return on its invested capital. The Water Co. seeks this rate change to preserve its financial integrity consistent with Section 13.183 of the Texas Water Code.

In previous orders, the Commission has required the Water Co. to make substantial improvements to its facilities – including the expensive purchase of wholesale water from LCRA, during a time of record drought and high regional demand, as well as the construction of a very expensive and long interconnect line and associated pump stations.[194] These improvements to the Water Co.'s, now used and useful facilities, were only made possible through the significant personal sacrifice of its Chief Operating Officer and General Manager, Sam Hammett who collateralized property, personal brokerage accounts, and the Water Co. to borrow sufficient money to make the required improvements.

Yet now, the ALJ, in adopting the E.D.'s revenue requirement and rate structure, would ignore these huge and very real expenditures for new facilities and deny even the Water Co.'s legitimate right to one employee and one truck. The ALJ's proposal on return on investment would leave the Water Co. entirely unable to cover its annual, interest-only loan payment. The ALJ' are counter to the Legislature's requirement that all utilities earn a reasonable return on their invested capital and set rates that preserve the financial integrity of those utilities rendering service to the public.

To support his claim, the ALJ references the Water Co.'s new storage tank and his

[194] App. Ex. 38 (Mediated Settlement Agreement).

disallowance of this required cost;[195] however, the Water Co. has already shown that his disallowance is inappropriate. He then makes the wild assertion that there is no evidence that the shareholder equity has been wiped out. How can the ALJ make such a claim, when the ALJ disallows any recovery for the old assets, disallows any recovery for the owners' investment, and disallows any recovery on the newly constructed assets? If those amounts are all zero or less, how has all equity not been wiped out?

The ALJ then chastises the Water Co. for prudently obtaining loans to cover the required construction and to offset annual operating losses.[196] The ALJ claims that large sums of money were not necessary to serve the customers, but his claim is not based on any evidence in the record.

The preponderance of the evidence in the record supports the Water Co.'s revenue requirement. Each of the E.D.'s and ALJ's recommended reductions and disallowances were shown to be inappropriate in detail above. Moreover, the preponderance of the evidence is that if the Commission adopts the ALJ's reduction and disallowances, then the Water Co. will be in the ALJs financial death spiral.

The ALJ did not properly apply or interpret applicable law, agency rules, written policies or prior administrative decisions when he categorically dismissed the Water Co.'s need to preserve its financial integrity. Regarding the Water Co.'s financial integrity, the Commissioners should overturn the ALJ's Findings of Fact Nos. 223-233, which serve as the basis for his decision, as his findings are not based upon the preponderance of the credible evidence or applicable law, agency rules, written policies or prior administrative decision. His supposition and arguments cannot support any findings of the Commission.

[195] PFD at 72.
[196] PFD at 73.

XI.
RATE DESIGN

The ALJ did not properly apply or interpret applicable law, agency rules, written policies or prior administrative decisions when he concluded that the E.D's rate design was appropriate. The ALJ bases his findings upon mere surmise made by an opposing party or suspicion of the existence of some evidence, instead of the preponderance of evidence, which have no legal effect and cannot support any findings.

The Water Co.'s rate design is based upon the Water Co.'s actual revenue requirement and the average number of Water Co. customers in the adjusted test year.[197] On the other hand, the E.D. staff's rate design is not based on the Water Co.'s actual revenue requirement, but upon Ms. Pascua's discredited revenue requirement, with its myriad of mistakes.[198] Moreover, the E.D.'s rate design uses the wrong number of customers and the wrong number of gallons to develop the rates.[199] By adopting the E.D.'s rate design, the ALJ did not base his findings on the preponderance of the evidence in the administrative record.

The ALJ did not properly apply or interpret applicable law, agency rules, written policies or prior administrative decisions when he categorically dismissed the Water Co.'s rate design. Regarding the Water Co.'s rate design, the Commissioners should overturn the ALJ's Findings of Fact Nos. 234-235, which serve as the basis for his decision, as his findings are not based upon the preponderance of the credible evidence or applicable law, agency rules, written policies or prior administrative decision. His supposition and arguments cannot support any findings of the Commission.

[197] App. Ex. 13 at 29.
[198] E.D. Ex. 2 at 18:6.
[199] E.D. Ex. 2, EDD-3.

XII.
TRANSCRIPT COSTS

The ALJ did not properly apply or interpret applicable law, agency rules, written policies or prior administrative decisions when he assessed the transcription costs against the Water Co. The ALJ bases his findings upon mere surmise made by an opposing party or suspicion of the existence of some evidence, instead of the preponderance of evidence, which have no legal effect and cannot support any findings.

The ALJ's assumes that the Water Co. has the financial integrity to pay for the transcript, but there is no evidence in the record on this point. Moreover, based on the ALJ's recommendation that the Water Co. operate at an annual loss of over $30,000, the Water Co. has little extra money to pay for a transcript that the ALJ ordered.

Each party should bear their own share of the cost for their portion of the transcript. The Commission may assess reporting and transcription costs to one or more of the parties participating in the proceeding. This matter is a rate proceeding; therefore if the Commission adds the transcript costs to the rate case expenses for the Water Co., then the issue regarding allocation of the transcript costs is a non-issue. However, to the extent the Commission does not allow additional testimony on rate case expenses and does not add the costs of the transcript to those rate case expenses, then the Commission should split the costs based between the parties.

In summary, if the transcript costs are not added to the rate case expenses, then requiring Protesters to bear their share of the costs would be just and reasonable. The Water Co. has been forced to spend a great deal of money to litigate this case, because of the Protester's unsupported contentions. The Water Co. respectfully requests that the Commission asses each party their own costs for their own transcripts, but assess each of the remaining transcript bill to the

Protesters. In the alternative, the Water Co. respectfully requests that the ALJ include the transcript costs in the rate case expenses when the ALJ conducts the upcoming hearing on rate case expenses.

The ALJ did not properly apply or interpret applicable law, agency rules, written policies or prior administrative decisions regarding the assessment of transcript costs. Regarding the Water Co.'s transcript costs, the Commissioners should overturn the ALJ's Findings of Fact Nos. 237 and 240, which serve as the basis for his decision, as his findings are not based upon the preponderance of the credible evidence or applicable law, agency rules, written policies or prior administrative decision. His supposition and arguments cannot support any findings of the Commission.

XIII.
REFUNDS

The ALJ did not properly apply or interpret applicable law, agency rules, written policies or prior administrative decisions when he ordered the Water Co. to pay any refunds. The ALJ bases his findings upon mere surmise made by an opposing party or suspicion of the existence of some evidence, instead of the preponderance of evidence, which have no legal effect and cannot support any findings.

The preponderance of the evidence already shows that the Water Co. is operating at a significant loss. The ALJ recommends that the Water Co. operate at a loss of $30,000 per year. Clearly, there are not any extra funds for any refund. Moreover, the Water Co., by the preponderance of the credible evidence, has shown that the rates as proposed are just and reasonable to cover its reasonable and necessary operating expenses and to allow the Water Co. to earn a return on the

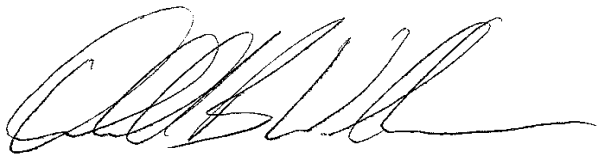
invested capital.

XIV.
CONCLUSION

WHEREFORE, Deer Creek Ranch Water Co., LLC respectfully requests that the Commissioners 1) overturn the ALJ's findings of fact, as listed above, 2) find that the Water Co.'s rates are just and reasonable; 3) find that the Water Co.'s operating expenses for the Adjusted Test Year are reasonable and necessary; 4) find that the Water Co.'s proposed rates are reasonable and necessary to provide sufficient revenue to cover the Water Co.'s reasonable and necessary operating expenses and allow for a reasonable rate of return on its invested capital; 5) order the ALJ to conduct a hearing on the Water Co.'s rate case expenses as proposed previously by the ALJ, which would include presentation of all legal fees, expert fees, and transcript costs; and 6) adopt an order establishing the rates and charges as proposed by the Water Co.

Respectfully submitted,

Randall B. Wilburn, Attorney-At-Law
3000 South IH 35, Suite 150
Austin, Texas 78704
Telephone: (512) 326-3200
Facsimile: (512) 326-8228



By: _____
Randall B. Wilburn
State Bar No. 2403334

ATTORNEYS FOR DEER CREEK RANCH WATER CO., LLC

CERTIFICATE OF SERVICE

This is to certify that the undersigned sent a true and correct copy of the foregoing Exceptions to the PFD, via first class mail, electronic mail, hand delivery, or fax in accordance with the applicable agency rules on this 21st day of July 2010 to the following parties:

The Honorable William G. Newchurch, Administrative Law Judge
STATE OFFICE OF ADMINISTRATIVE HEARINGS
P. O. Box 13025
Austin, Texas 78711-3025
Telephone: 475-4993
Telecopier: 475-4994

LaDonna Castañuela, Chief Clerk of the TCEQ
TCEQ OFFICE OF THE CHIEF CLERK, MC 173
P.O. Box 13087
Austin, Texas 78711-3087
Telephone: 512-239-3300
Telecopier: 512-239-3311

James B. Murphy
TCEQ OFFICE OF PUBLIC COUNSEL, MC 103
P.O. Box 13087
Austin, Texas 78711-3087
Telephone: 512-239-6363
Telecopier: 512-239-6377

Brian MacLeod
TCEQ ENVIRONMENTAL LAW DIVISION, MC 173
P.O. Box 13087
Austin, Texas 78711-3087
Telephone: 512-239-0600
Telecopier: 512-239-0606

Mr. David M. Gottfried
Law Office of David M. Gottfried, P.C.
1505 West 6th Street
Austin, Texas 78703
Telephone: 512-494-1481
Telecopier: 512-472-4013

Jennifer Jones
740 Green Oak Dr.
Dripping Springs, Texas 78620
Telephone: 512-291-7446
Electronic Mail: jbirdrn@austin.rr.com

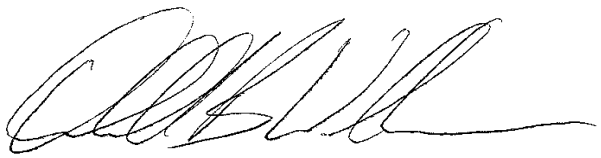
Christina Chavez
601 Panorama Dr.
Dripping Springs, Texas 78620
Telephone: 512-680-9540
Electronic Mail: info78620@yahoo.com

Royce H. Henderson
108 Twin Creek Circle
Dripping Springs, Texas 78620
Telephone: 512-264-1056

Chris Elder
1020 Tanaqua Ln.
Austin, Texas 78739
Telephone: 512-791-7862
Electronic Mail: chris@lukeparkerhomes.com

Jonathan McCabe
10006 Thomas Ln.
Dripping Springs, Texas 78620
Telephone: 512-924-6665
Electronic Mail: mccabehomes@gmail.com

Bradley and Stephanie Weaver
17202 Panorama Dr.
Dripping Springs, Texas 78620
Telephone: 512-389-7416
Telecopier: 512-369-6219



Randall B. Wilburn